

Senate File 284 - Introduced

SENATE FILE 284

BY KIBBIE and HOUSER

A BILL FOR

1 An Act relating to motor fuel by establishing standards for the
2 sale of such fuel, providing tax credits for ethanol blended
3 gasoline, and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

STANDARDS

Section 1. Section 214A.1, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 23A. "*Unblended gasoline*" means gasoline other than any of the following:

a. Standard ethanol blended gasoline.

b. E-85 gasoline.

Sec. 2. NEW SECTION. 214A.2C Gasoline advertised, sold, or dispensed by a retail dealer — ethanol blend requirement and exceptions — applicability.

1. Except as otherwise provided in this section, a retail dealer shall not advertise, sell, or dispense unblended gasoline in this state.

2. A retail dealer may advertise, sell, or dispense unblended gasoline in this state if all of the following apply:

a. The unblended gasoline is used to operate a motor which powers a qualified motor vehicle which is any one of the following:

(1) An aircraft as defined in section 328.1.

(2) A motor vehicle used exclusively for motor sports, including on a raceway, if the motor vehicle cannot operate on a highway as provided in chapter 321 or rules adopted by the state department of transportation.

(3) A 1985 or older model vehicle that is registered as an antique vehicle under section 321.115.

(4) A snowmobile as defined in section 321G.1.

(5) An all-terrain vehicle as defined in section 321I.1.

(6) A watercraft as defined in section 462A.2.

(7) A lawn mower or other implement powered by a small motor.

b. The retail dealer does not use more than one metered pump located at a retail motor fuel site to advertise, sell, or dispense unblended gasoline.

3. A retail dealer may advertise, sell, or dispense

1 unblended gasoline at a retail motor fuel site owned or
2 operated by the retail dealer pursuant to a waiver issued by
3 the department to the retail dealer.

4 a. The department shall only issue a waiver to a retail
5 dealer after approving an application submitted to the
6 department by the retail dealer in a manner and according
7 to procedures required by the department which application
8 demonstrates that the retail dealer is not able to reasonably
9 obtain ethanol blended gasoline for sale at the retail motor
10 fuel site.

11 b. A waiver issued under this subsection expires six months
12 from the date of issuance. However, a retail dealer who has
13 been issued a waiver may apply for and be issued any number of
14 subsequent waivers.

15 4. a. A retail dealer may advertise, sell, or dispense
16 unblended gasoline at a retail motor fuel site owned or
17 operated by the retail dealer without restriction as otherwise
18 provided in this section until January 1, 2012.

19 b. This subsection is repealed on January 1, 2012.

20 Sec. 3. Section 214A.3, Code 2011, is amended by adding the
21 following new subsection:

22 NEW SUBSECTION. 3. A retail dealer who advertises the sale
23 of gasoline that is not ethanol blended gasoline shall refer to
24 the gasoline as unblended gasoline.

25 Sec. 4. Section 214A.16, Code 2011, is amended to read as
26 follows:

27 **214A.16 Notice of ~~renewable~~ biodiesel fuel or unblended**
28 **gasoline — decal.**

29 1. a. ~~If ethanol blended gasoline is sold from a motor fuel~~
30 ~~pump~~ a motor fuel pump dispenses unblended gasoline, the motor
31 fuel pump shall have affixed a decal identifying the ~~ethanol~~
32 ~~blended gasoline~~ motor fuel as unblended gasoline. If the
33 motor fuel pump dispenses ethanol blended gasoline classified
34 as higher than standard ethanol blended gasoline pursuant
35 to section 214A.2, the decal shall ~~contain the following~~

1 notice: ~~"FOR FLEXIBLE FUEL VEHICLES ONLY"~~ identify the ethanol
2 blended gasoline as for flexible fuel vehicles only.

3 *b.* If biodiesel fuel is sold from a motor fuel pump, the
4 motor fuel pump shall have affixed a decal identifying the
5 biodiesel fuel as provided in 16 C.F.R. pt. 306.

6 2. The design and location of the decal shall be prescribed
7 by rules adopted by the department. A decal identifying a
8 ~~renewable~~ biodiesel fuel shall be consistent with standards
9 adopted pursuant to section 159A.6. The department may approve
10 an application to place a decal in a special location on a pump
11 or container or use a decal with special lettering or colors,
12 if the decal appears clear and conspicuous to the consumer.
13 The application shall be made in writing pursuant to procedures
14 adopted by the department.

DIVISION II

E-15 PROMOTION TAX CREDIT

17 Sec. 5. Section 2.48, subsection 3, paragraph d,
18 subparagraph (5), Code 2011, is amended to read as follows:

19 (5) The ~~ethanol~~ E-15 promotion tax credits available under
20 section 422.11N.

21 Sec. 6. Section 422.11N, subsection 1, paragraph f, Code
22 2011, is amended to read as follows:

23 *f. "Tax credit"* means the ~~ethanol~~ E-15 promotion tax credit
24 as provided in this section.

25 Sec. 7. Section 422.11N, subsection 3, Code 2011, is amended
26 to read as follows:

3. The taxes imposed under this division, less the tax
credits allowed under section 422.12, shall be reduced by an
~~ethanol~~ E-15 gasoline promotion tax credit for each tax year
that the taxpayer is eligible to claim the tax credit under
this section. In order to be eligible, all of the following
must apply:

33 a. The taxpayer is a retail dealer who sells and dispenses
34 ethanol blended gasoline designated as E-15 or higher pursuant
35 to section 214A.2 through a motor fuel pump in the tax year in

1 which the tax credit is claimed.

2 *b.* The retail dealer complies with requirements of the
3 department to administer this section.

4 Sec. 8. Section 422.11N, subsection 5, paragraph a,
5 unnumbered paragraph 1, Code 2011, is amended to read as
6 follows:

7 For a retail dealer whose tax year is the same as a
8 determination period beginning on January 1 and ending on
9 December 31, the retail dealer's tax credit is calculated by
10 multiplying the retail dealer's total ethanol gallonage from
11 ethanol blended gasoline designated as E-15 or higher, pursuant
12 to section 214A.2, by a tax credit rate, which may be adjusted
13 based on the retail dealer's biofuel threshold percentage
14 disparity. The tax credit rate is as follows:

15 Sec. 9. Section 422.11N, subsection 6, Code 2011, is amended
16 to read as follows:

17 6. A retail dealer is eligible to claim an ~~ethanol~~ E-15
18 gasoline promotion tax credit as provided in this section even
19 though the retail dealer claims an E-85 gasoline promotion tax
20 credit pursuant to section 422.11O for the same tax year and
21 for the same ethanol gallonage.

22 Sec. 10. Section 422.11O, subsection 5, Code 2011, is
23 amended to read as follows:

24 5. A retail dealer is eligible to claim an E-85 gasoline
25 promotion tax credit as provided in this section even though
26 the retail dealer claims an ~~ethanol~~ E-15 gasoline promotion tax
27 credit pursuant to section 422.11N for the same tax year for
28 the same ethanol gallonage.

29 Sec. 11. Section 422.33, subsection 11A, unnumbered
30 paragraph 1, Code 2011, is amended to read as follows:

31 The taxes imposed under this division shall be reduced by
32 an ~~ethanol~~ E-15 promotion tax credit for each tax year that
33 the taxpayer is eligible to claim the tax credit under this
34 subsection.

35 Sec. 12. Section 422.33, subsection 11A, paragraphs a and b,

1 Code 2011, are amended to read as follows:

2 a. The taxpayer shall claim the tax credit in the same
3 manner as provided in section 422.11N. The taxpayer may claim
4 the tax credit according to the same requirements, for the same
5 amount, and calculated in the same manner, as provided for the
6 ~~ethanol~~ E-15 promotion tax credit pursuant to section 422.11N.
7 b. Any ~~ethanol~~ E-15 promotion tax credit which is in excess
8 of the taxpayer's tax liability shall be refunded or may be
9 shown on the taxpayer's final, completed return credited to the
10 tax liability for the following tax year in the same manner as
11 provided in section 422.11N.

12 Sec. 13. Section 452A.31, subsection 2, paragraph a,
13 subparagraph (1), Code 2011, is amended to read as follows:

14 (1) The total ethanol blended gasoline gallonage which
15 is the retail dealer's total number of gallons of ethanol
16 blended gasoline and which includes any subclassification
17 required by the department. However, the total ethanol blended
18 gasoline gallonage must at least include all of the following
19 subclassifications:

20 (a) The total ~~E-xx~~ E-10 gasoline gallonage which is the
21 total number of gallons of ethanol blended gasoline ~~other than~~
22 ~~E-85 gasoline~~ designated as E-9 or E-10.

23 (b) The total E-15 gasoline gallonage which is the total
24 number of gallons of ethanol blended gasoline designated as
25 E-11 to E-15.

26 (c) The total ~~E-85~~ flexible fuel gasoline gallonage which
27 is the total number of gallons of ethanol blended gasoline
28 designated as E-16 to E-85 gasoline.

29 Sec. 14. Section 452A.31, subsection 4, paragraph a,
30 subparagraph (1), Code 2011, is amended by striking the
31 subparagraph and inserting in lieu thereof the following:

32 (1) The aggregate ethanol blended gasoline gallonage which
33 is the aggregate total number of gallons of ethanol blended
34 gasoline and which includes the aggregate ethanol blended
35 gasoline gallonage for each subclassification provided for in

1 subsection 2.

2 Sec. 15. NEW SECTION. **452A.34 Classification of ethanol**
3 **blended fuel.**

4 For purposes of this division, ethanol blended fuel shall be
5 classified in the same manner as provided in section 214A.2.

6 Sec. 16. 2006 Iowa Acts, chapter 1142, section 49,
7 subsection 2, as amended by 2006 Iowa Acts, chapter 1175,
8 section 17, is amended to read as follows:

9 2. For a retail dealer who may claim an ~~ethanol~~ E-15
10 promotion tax credit under section 422.11N or 422.33,
11 subsection 11A, as enacted in this Act and amended in
12 subsequent Acts, in calendar year 2020 and whose tax year ends
13 prior to December 31, 2020, the retail dealer may continue to
14 claim the tax credit in the retail dealer's following tax year.
15 In that case, the tax credit shall be calculated in the same
16 manner as provided in section 422.11N or 422.33, subsection
17 11A, as enacted in this Act and amended in subsequent Acts,
18 for the remaining period beginning on the first day of the
19 retail dealer's new tax year until December 31, 2020. For
20 that remaining period, the tax credit shall be calculated in
21 the same manner as a retail dealer whose tax year began on the
22 previous January 1 and who is calculating the tax credit on
23 December 31, 2020.

24 Sec. 17. **EFFECTIVE DATE.** This division takes effect January
25 1, 2012.

26 Sec. 18. **APPLICABILITY.** The sections of this division
27 amending section 422.11N and section 422.33, subsection 11A,
28 and the section of this Act amending 2006 Iowa Acts, chapter
29 1142, section 49, subsection 2, as amended by 2006 Iowa Acts,
30 chapter 1175, section 17, apply to tax years beginning on or
31 after January 1, 2012.

32 **EXPLANATION**

33 **REGULATION OF ETHANOL BLENDED GASOLINE.** This bill amends
34 Code chapter 214A, which provides authority to the department
35 of agriculture and land stewardship (department) to regulate

1 the sale of motor fuel, including renewable fuel such as
2 ethanol blended gasoline. Code section 214A.2 provides for
3 different types of gasoline and establishes standards or
4 specifications for gasoline in conformance with federal law
5 and specifically regulations promulgated by the United States
6 environmental protection agency (EPA), and in part based on
7 standards published by the American society for testing and
8 materials (A.S.T.M.) international. The Code section provides
9 that standard ethanol blended gasoline is classified by its
10 percent volume of ethanol, referred to as "E-xx" where "xx"
11 designates the percentage (e.g., E-10 or E-15).

12 ETHANOL BLENDED GASOLINE REQUIREMENT. The bill creates a
13 new requirement that a retail dealer cannot advertise, sell, or
14 dispense gasoline other than ethanol blended gasoline; either
15 standard ethanol blended gasoline or so-called E-85 gasoline.
16 Gasoline which does not contain the requisite percentage of
17 ethanol is referred to as "unblended gasoline".

18 EXCEPTIONS. Notwithstanding the prohibition, the bill
19 allows a retail dealer to continue to advertise, sell, or
20 dispense unblended gasoline in limited circumstances. First,
21 the prohibition does not apply to gasoline used to operate
22 aircraft, or motor vehicles involved exclusively in motor
23 sports events. The requirement also does not apply to
24 gasoline for use in certain vehicles such as antique vehicles,
25 snowmobiles, all-terrain vehicles, watercraft, and small
26 motors. The bill prohibits a retail dealer from using more
27 than one metered pump to dispense unblended gasoline. Second,
28 the prohibition does not apply to a retail dealer who has been
29 issued a waiver by the department because the retail dealer has
30 not been able to reasonably obtain ethanol blended gasoline for
31 sale at the retail motor fuel site. The waiver expires six
32 months from the date of issuance. However, a retail dealer who
33 has been issued a waiver may apply for any number of subsequent
34 waivers. Third, a retail dealer may continue to advertise,
35 sell, or dispense unblended gasoline from one or more metered

1 pumps located at a retail motor fuel site until January 1,
2 2012.

3 ADVERTISING. The bill provides that a retail dealer must
4 affix a decal on each metered pump which dispenses unblended
5 gasoline, notifying the public of its designation and any
6 restricted use. The bill eliminates a requirement that a
7 metered pump dispensing ethanol blended gasoline be affixed
8 with a decal.

9 APPLICABLE PENALTIES. Code section 214A.11 provides that
10 a person who violates a provision of Code chapter 214A is
11 guilty of a serious misdemeanor, and that each day that a
12 continuing violation occurs is considered a separate offense.
13 A serious misdemeanor is punishable by confinement for no
14 more than one year and a fine of at least \$315 but not more
15 than \$1,875. The Code section also provides that in lieu of
16 seeking a prosecution, the state may proceed against the person
17 by initiating an alternative civil enforcement action as a
18 contested case proceeding by the department under Code chapter
19 17A or as a civil judicial proceeding by the attorney general
20 upon referral by the department. The applicable civil penalty
21 is at least \$100 but not more than \$1,000 for each violation.
22 Each day that a continuing violation occurs shall be considered
23 a separate offense.

24 E-15 PROMOTION TAX CREDIT. The bill amends the ethanol
25 promotion tax credit which is calculated separately for each
26 retail motor fuel site from which the retail dealer sells and
27 dispenses ethanol blended gasoline (Code sections 422.11N and
28 422.33, subsection 11A). The tax credit rate depends upon the
29 number of gallons of ethanol blended gasoline and biodiesel
30 blended fuel that a retail dealer sold throughout a calendar
31 year (referred to as a determination period). The amount of
32 the tax credit depends upon whether the retail dealer met that
33 biofuel threshold. This bill renames the tax credit as the
34 E-15 promotion tax credit, and provides that the tax credit
35 applies only to those gallons of ethanol blended gasoline

1 designated as E-15 or higher. It also allows a retail dealer
2 filing a tax return on a noncalendar year basis to claim the
3 tax credit. The tax credit is eliminated on January 1, 2021.

4 REPORTING. The bill also amends reporting requirements
5 by retail dealers and the department of revenue. A retail
6 dealer's report calculates the total motor fuel gallonage,
7 and further divides that number based on a number of
8 classifications depending upon the type of motor fuel sold,
9 including ethanol blended gasoline gallonage. The department
10 then calculates the aggregate total for the motor fuel
11 gallonage including by classification for the determination
12 period. The bill revises the reporting classifications for
13 ethanol blended gasoline, by including subclassifications for
14 E-9 and E-10, E-11 to E-15, and E-16 to E-85. It provides that
15 the department may establish additional subclassifications.
16 The bill's provisions related to tax credit and reporting
17 requirements are effective on January 1, 2012, and tax credit
18 provisions are applicable to the tax years beginning on or
19 after that date.